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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

THE NORTH RIVER INSURANCE
COMPANY,

Defendant and Appellant;

BAD BOYS BAIL BONDS,

Real Party in Interest and Appellant.

F079520

(Super. Ct. No. VCU278643)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Nathan G. Leedy and Brett R. Alldredge, Judges.

Jefferson T. Stamp for Defendant, Real Party in Interest and Appellants.

Deanne H. Peterson, County Counsel, Aaron Zaheen and Jennifer M. Shiffert, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Smith, J. and Snauffer, J.

A surety appeals a summary judgment entered on its bail bond. The surety contends the criminal defendant's constitutional rights were violated during the setting of bail and, as a result, the bond is void. The surety also contends the summary judgment is void because the judge who ordered bail forfeited did not enter the summary judgment. The surety argues the language in Penal Code section 1306, subdivision (a)¹ stating "the court which has declared the forfeiture shall enter a summary judgment" should be interpreted to mean the judge who declared the forfeiture must enter the summary judgment. The surety contends such an interpretation is necessary to comply with due process.

First, we join those decisions holding that a constitutional violation in setting the amount of a criminal defendant's bail "does not void the underlying bail bond." (*People v. Accredited Surety & Casualty Co.* (2019) 34 Cal.App.5th 891, 897 (*Accredited '19*); see *People v. The North River Ins. Co.* (2020) 48 Cal.App.5th 226, 233–235 (*North River '20*).) Second, we interpret the word "court" in section 1306, subdivision (a) to mean the superior court and not a specific judge. Furthermore, we conclude that allowing a judge other than the one who declared bail forfeited to enter the summary judgment does not violate due process.

We therefore affirm the summary judgment.

FACTS AND PROCEEDINGS

On December 14, 2017, Noe Barraza Carrasco, a convicted felon, was charged with unlawful possession of a firearm—specifically, a .380 caliber semiautomatic handgun. On December 18, 2017, Carrasco appeared in court for arraignment. After the entry of a not guilty plea, the hearing ended with the following exchange:

"THE COURT: Set your matter for preliminary hearing January 3rd with a conference January 2nd both at 8:30 in Department 3 in Visalia. Bail will be set at \$25,000.00. You will be back in court January 2nd.

¹ All unlabeled statutory references are to the Penal Code.

“THE DEFENDANT: Can the bail be lowered?

“THE COURT: No.

“THE DEFENDANT: Can I be OR’ed?

“THE COURT: No.”

On December 22, 2017, Bad Boys Bail Bonds, acting as the agent for The North River Insurance Company, a New Jersey corporation (collectively, Surety), posted bail bond number T25-50640185 in the amount of \$25,000 for the release of Carrasco from custody. The bail bond stated Carrasco was required to appear in court on January 2, 2018, at 8:30 a.m. The bail bond also stated: “If the forfeiture of this bond be ordered by the Court, judgment may be summarily made and entered forthwith against the said THE NORTH RIVER INSURANCE COMPANY for the amount of its undertaking herein as provided by Sections 1305 and 1306 of the Penal Code.”

Carrasco made his court appearances in January, February and March 2018. On April 20, 2018, Carrasco failed to appear for a scheduled hearing. As a result, Judge Nathan Leedy ordered bail forfeited and issued a bench warrant. On April 23, 2018, a deputy clerk of court mailed Surety a notice of order forfeiting bail. The notice stated: “Unless said order of forfeiture is set aside within 180 days from date of this notice, summary judgment will be entered pursuant to section [] 1306 of the Penal Code.”

In October 2018, Surety filed a motion to extend the appearance period² pursuant to section 1305.4. Surety supported the motion with a declaration from its investigator describing the attempts to locate Carrasco. Respondent filed a notice of nonopposition.

² The period in which a surety may return the criminal defendant to custody and exonerate bail (i.e., have the forfeiture of bail vacated) often is called the “appearance period.” (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 658 (*American Contractors*).) This period, which initially is 180 days plus five days for mailing the notice of forfeiture, is described in subdivisions (b)(1) and (c) of section 1305. The period may be extended an additional 180 days pursuant to section 1305.4.

On November 15, 2018, Judge Leedy granted the motion, vacated the prior summary judgment date, and set a new summary judgment date of May 14, 2019. In this context, “summary judgment date” refers to the expiration of the appearance period.

On May 17, 2019, Judge Brett Alldredge signed an order for summary judgment on the bail bond. To have the summary judgment filed, the County of Tulare initiated a civil action assigned case No. VCU278643. The court’s order stated (1) the bail had been forfeited on April 20, 2018, (2) Surety had been notified of the forfeiture, and (3) the appearance period had elapsed. It also stated the court, “having been fully advised in the premises and good cause appearing therefore,” ordered summary judgment be entered. Within a week, a notice of entry of judgment and an amended notice of entry of judgment were served on Surety by mail.

In June 2019, Surety filed a timely notice of appeal. Prior to appealing, Surety did not file a motion to set aside summary judgment, vacate the forfeiture, and exonerate the bail bond in the trial court. (See e.g., *County of Los Angeles v. Financial Casualty & Surety, Inc.* (2018) 5 Cal.5th 309, 313 [surety challenged the entry of summary judgment on a forfeited bond by filing a motion to set aside summary judgment in the superior court]; *People v. Accredited Surety & Casualty Co.* (2014) 230 Cal.App.4th 548, 554 [“order denying a motion to set aside summary judgment on a bail bond forfeiture is an appealable order”].)

DISCUSSION

I. SETTING BAIL

A. Standing

Respondent argues Surety lacks standing to bring a claim that Carrasco’s constitutional rights were violated during the setting of the amount of his bail. We disagree.

In *Accredited '19, supra*, 34 Cal.App.5th 891, the Third District concluded a surety, as a party to the bond contract, has standing to raise a claim based on a theory that violation of a criminal defendant's constitutional rights renders the bond contract void. (*Id.* at pp. 896–897.) In *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, a case that did not involve a bail bond, our Supreme Court analyzed a party's standing to raise a claim that a transaction was void. (*Id.* at p. 939.) In *Yvanova*, the court concluded a borrower-homeowner has standing to challenge the lender's assignment of the borrower's note and deed of trust to a third party as void, even though the borrower was not a party to the transaction between lender and third party. (*Ibid.*) Based on *Accredited '19* and the rationale in *Yvanova*, we conclude a surety has standing to raise a challenge that, if valid, would render the bail bond contract void.

B. Existence of a Constitutional Violation

Surety contends the trial court rendered its pretrial detention order without considering Carrasco's financial ability to pay or whether less restrictive alternatives to cash bail were appropriate. Surety asserts the failure to do so violated Carrasco's constitutional rights as explained in *In re Humphrey* (2018) 19 Cal.App.5th 1006, review granted May 23, 2018, S247278 (*Humphrey*).

For purposes of this appeal, we assume, without deciding, that the initial setting of Carrasco's bail without an individualized consideration of his circumstances violated his constitutional rights. The same assumption was made by the Third District in *Accredited '19, supra*, 34 Cal.App.5th 891 based on the rationale that *Humphrey* was pending before the California Supreme Court. (*Id.* at p. 897.) As of the date of this opinion, the Supreme Court has not set *Humphrey* for oral argument. Consequently, for purposes of this appeal, we also assume bail was set in a manner that violated Carrasco's constitutional rights.

C. Consequences of the Constitutional Violation

Surety's argument that the constitutional violation in setting bail caused the judgment entered on the bail bond to be void has several steps. First, Surety contends the constitutional violation caused the continued detention of Carrasco to be illegal and, moreover, void. Second, Surety contends that because "the custody of the bail is merely a continuation of the original imprisonment by the state, it follows that [Surety's] constructive custody of Carrasco was also illegal" Third, as a result of this illegality, Surety "could not lawfully surrender Carrasco under Penal Code Section 1300(a)." Fourth, because Surety did not legally obtain constructive custody of Carrasco and the unqualified right to surrender him, the bail bond contract was void and unenforceable. Fifth, as a result of the bail bond contract being void, the trial court lost jurisdiction. Sixth, the loss of jurisdiction means the trial court had no authority to enter the summary judgment and, therefore, the judgment is a nullity.

The foregoing line of argument, which includes a loss of jurisdiction, was addressed recently by the Second Appellate District in *North River '20, supra*, 48 Cal.App.5th 226. The court analyzed whether the summary judgment on the bail bond in that case was void from a jurisdictional perspective. (*Id.* at pp. 233–234.) The court stated a judgment is void only when the court entering that judgment lacks jurisdiction in a fundamental sense and is merely voidable when the court acts in excess of its jurisdiction. (*Id.* at p. 233.) The court determined the trial court's summary judgment on the bail bond was not void because the trial court at all times had fundamental jurisdiction over both the subject matter and the parties. (*Id.* at p. 234.) The court stated "[t]he independence of bail proceedings from the underlying criminal prosecution is why any noncompliance with *Humphrey* during the prosecution does not affect—let alone eviscerate—the trial court's jurisdiction over the collateral bail proceedings." (*Id.* at p. 235.) Based on its jurisdictional analysis and the results of other cases, the Second Appellate District concluded any noncompliance with the bail setting principles adopted

in *Humphrey* did not render the subsequently issued bail bond void. (*Ibid.*; see *People v. Financial Casualty & Surety, Inc.* (2019) 39 Cal.App.5th 1213, 1223; *Accredited '19*, *supra*, 34 Cal.App.5th 891, 897-899; *People v. Accredited Surety & Casualty Co., Inc.* (2004) 125 Cal.App.4th 1, 8.)

In addition, the Second Appellate District addressed the surety's argument that the earlier cases were "inapplicable because its challenge is focused on how a *Humphrey* violation affects the validity of the state's detention of a criminal defendant and, consequently, a surety's power to constructively detain the defendant through re-arrest to assure his or her appearance in court." (*North River '20*, *supra*, 48 Cal.App.5th at p. 236.) The court rejected the argument, concluding that the cases relied upon by the surety had no relevance to the issue before it. (*Ibid.*) One of the earlier cases referred to by Surety is *Accredited '19*, *supra*, 34 Cal.App.5th 891, in which the court stated: "Failure to comply with the procedural requirements of *Humphrey*, requirements intended to safeguard the defendant's constitutional rights, did not render the subsequently issued bond void." (*Id.* at p. 899.)

Based on existing precedent, we reject Surety's argument that the violation of Carrasco's constitutional rights in the setting of bail rendered Surety's constructive custody illegal and caused the bail bond contract to be void.

II. AUTHORITY OF JUDGE TO ENTER SUMMARY JUDGMENT

As a second ground for its appeal, Surety asserts the summary judgment was entered by the wrong judge. Surety interprets section 1306, subdivision (a) to mean the summary judgment must be entered by the judge who declared bail forfeited. Surety also contends it would violate due process if summary judgment was entered by a judge who did not (1) hear all the evidence of the criminal defendant's unexcused failure to appear and (2) declare the forfeiture. Surety supports its arguments by citing *Bankers Ins. Co. v. State* (La.App. 1999) 743 So.2d 870, a case involving a Louisiana statute.

A. Respondent's Omission

Respondent did not address this ground in its appellate brief. Consequently, Surety's reply brief states this court "should consider the Appellant's argument to be unopposed and find in favor of Appellants on this basis." We reject this approach and will decide the statutory and constitutional issues on their merits. When a respondent elects not to file a respondent's brief, appellate courts do not treat that choice as a default or a concession that the trial court erred. (*Hogue v. Hogue* (2017) 16 Cal.App.5th 833, 835, fn. 1.) Instead, the appellate court examines the record and points raised in the opening brief to determine whether the appellant has carried its burden of affirmatively demonstrating prejudicial error. (*Ibid.*; Cal. Rules of Court, rule 8.220(a)(2).)

B. Overview of Bail Forfeiture Statutes

"While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature. [Citation.] 'The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court.' " (*American Contractors, supra*, 33 Cal.4th at p. 657.)

Bail bonds are regarded as contracts between the government and the surety. (*American Contractors, supra*, 33 Cal.4th at p. 657.) Nonetheless, the forfeiture and exoneration of bail bonds is a statutory procedure governed by the Penal Code. Here, the statutory procedure for summary judgment was explicitly incorporated into the bond, which stated: "If the forfeiture of this bond be ordered by the Court, judgment may be summarily made and entered forthwith ... as provided by Sections 1305 and 1306 of the Penal Code."

When a criminal defendant for whom a bail bond has been posted fails to appear as required and lacks a sufficient excuse, the trial court must declare a forfeiture of the bond in open court. (§ 1305, subd. (a).) Thereafter, the surety has a statutory appearance period in which to either produce the criminal defendant in court and have the forfeiture

set aside, or demonstrate other circumstances requiring the court to vacate the forfeiture. (*American Contractors, supra*, 33 Cal.4th at p. 657.) For a bond exceeding \$400, the appearance period is 185 days (180 days, plus five days for service by mail). (§ 1305, subds. (b)(1), (c)(1); *American Contractors, supra*, 33 Cal.4th at p. 658.) On the surety's motion and a showing of good cause, the court may extend the appearance period for up to an additional 180 days. (§ 1305.4.)

“When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, *the court which has declared the forfeiture shall enter a summary judgment* against each bondsman named in the bond in the amount for which the bondsman is bound.” (§ 1306, subd. (a), italics added.) The trial court has 90 days to enter summary judgment on the bond. (§ 1306, subd. (c).)

Here, the summary judgment was entered three days after the appearance period expired. Thus, Surety does not contend the summary judgment was entered too early or too late. (See § 1306, subd. (c) [when time for entry of summary judgment expires, “the bail is exonerated”]; *American Contractors, supra*, 33 Cal.4th at p. 658; *People v. United States Fire Ins. Co.* (2015) 242 Cal.App.4th 991, 1001 [summary judgment entered prematurely is voidable].)

C. Interpretation of Section 1306

Surety contends the statutory language stating “the court which has declared the forfeiture shall enter a summary judgment” should be interpreted to mean the judge who declared the forfeiture must enter the summary judgment. Surety refers to *Newby v. Bacon* (1922) 58 Cal.App. 337 (*Newby*), where the court stated that “the legislature often uses the words ‘court’ and ‘judge’ without discrimination, and such words will be construed as synonymous whenever it is necessary to carry into effect the obvious intent of the legislature. [Citations.] Whether the term ‘court’ is used as synonymously or interchangeably with ‘judge,’ and whether the act is to be performed by one or the other,

is generally to be determined by the character of the act rather than by such designation.” (*Id.* at p. 339; see *Mabee v. Nurseryland Garden Centers, Inc.* (1979) 88 Cal.App.3d 420, 424 [judge, not jury, determines the right to and amount of attorney fees], superseded by statute on another ground as stated in *Santisas v. Goodin* (1998) 17 Cal.4th 599, 629.) Based on this principle, we examine the character of the act to be performed (i.e., entry of summary judgment) to determine whether the phrase “the court which has declared the forfeiture” means the judge who declared the bail forfeited.

A summary judgment in a bail bond proceeding is not a typical adversary civil action. (*County of Los Angeles v. Amwest Surety Co.* (1983) 147 Cal.App.3d 961, 967 (*Amwest*).) Rather, it is a consent judgment. (*American Contractors, supra*, 33 Cal.4th at pp. 663–664.) As such, the judgment entered must comply with the terms of the parties’ agreement—that is, the judgment must be one to which the parties consented. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 44, p. 105 [consent “judgment must be entered in substantial conformity with the agreement”].)

Here, the terms of the parties’ agreement for the entry of judgment are stated in the bail bond: “If the forfeiture of this bond be ordered by the Court, judgment may be summarily made and entered forthwith against the said THE NORTH RIVER INSURANCE COMPANY for the amount of its undertaking herein *as provided by Sections 1305 and 1306 of the Penal Code.*” Because the agreement incorporates the statutory requirements, the conditions that must be met for the entry of summary judgment are stated in section 1306, subdivision (a). First, the bond must have been forfeited. Second, the appearance period must have elapsed. Third, the forfeiture must not have been set aside. When these conditions exist, “the court which has declared the forfeiture shall enter a summary judgment.” (§ 1306, subd. (a).) Thus, “the character of the act” to be performed is a straightforward examination of the record to determine whether the three conditions have been satisfied and signing the summary judgment. (*Newby, supra*, 58 Cal.App. at p. 339.) As to the timing of these acts, the determination

will be made approximately six months after the forfeiture or, if the appearance period is extended the maximum amount, approximately one year after the forfeiture is declared.

Determining whether the three conditions have been satisfied is not complex and does not involve reevaluating the forfeiture. Consequently, completing the acts necessary for the filing of a summary judgment does not involve exercising knowledge or insight gained in declaring the forfeiture. Instead, the acts are almost ministerial in nature. Consequently, we conclude that requiring the same judge who declared the forfeiture to enter the summary judgment would serve little purpose and would be administratively inefficient for superior courts, especially in the larger counties. Accordingly, we do not infer the Legislature meant “judge” when it used the term “the court.” (§ 1306, subd. (a).) Therefore, we interpret the term “the court” to mean the superior court, not an individual judge. (See Cal. Const., art. VI, § 4 [“In each county there is a superior court of one or more judges”].)

Surety presents the textual argument that “use of the definite article ‘the’ is a clear intent by the Legislature to refer to the specific judge which [*sic*] declared the forfeiture as the proper court for entering judgment.” As we stated in *Honchariw v. County of Stanislaus* (2013) 218 Cal.App.4th 1019, “the definite article ‘the’ refers to a specific person or thing.” (*Id.* at p. 1034.) In subdivision (a) of section 1306, the term “the court” refers to a specific thing—namely, the superior court of a particular county. In this case, the specific thing is the Tulare County Superior Court. Thus, the Legislature’s use of the term “the court” means the civil action initiated for the entry of the summary judgment on a forfeited bail bond must be commenced in the same county as the underlying criminal action.

In *People v. Frontier Pacific Ins. Co.* (2000) 83 Cal.App.4th 1289 (*Frontier*), the appellate court concluded that the summary judgment on a bail bond was “void for failure of a judge to sign the judgment within the time specified by law. (§ 1306.)” (*Frontier*, *supra*, at p. 1292.) In that case, “[t]he summary judgment was signed by the clerk of the

court.” (*Ibid.*) In concluding the summary judgment was void, the appellate court stated: “It is clear from the plain language of sections 1305 and 1306 that the court (i.e. the judge) and the clerk have distinct functions. It is equally clear it is the court’s duty, not the clerk’s, to render and enter the judgment. [Citation.] At a minimum, this requires that a judge sign the judgment.” (*Id.* at p. 1295.)

The appellate court in *Frontier* did not address whether the judge who declared the forfeiture also must sign the summary judgment. The language used by the court supports different inferences. For example, the court used an indefinite article in stating “this requires that *a judge* sign the judgment” (*Frontier, supra*, 83 Cal.App.4th at p. 1295), which supports the inference that any judge of that county’s superior court could sign the summary judgment. In any event, “[l]anguage used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered.” (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2.) Consequently, our interpretation of section 1306, subdivision (a) as authorizing any judge of the superior court to sign the summary judgment does not contradict the holding in *Frontier*.

D. Due Process

Surety contends the summary judgment on the bond “is unconstitutional because it was entered by a judge who did not hear the evidence of the bail forfeiture.” Surety supports this contention by citing *European Beverage, Inc. v. Superior Court* (1996) 43 Cal.App.4th 1211 for the following principle: “It is considered a denial of due process for a new judge to render a final judgment without having heard all of the evidence.” (*Id.* at p. 1214.) That case involved a bifurcated bench trial where the two phases of the trial were heard by different judges. A bifurcated bench trial is readily distinguishable from the civil proceeding involving the entry of summary judgment on a bail bond because the bail bond civil proceeding is separate from the criminal case in which the forfeiture was

declared. In short, the forfeiture of bail and the entry of summary judgment on a bail bond are procedurally separate and the factual inquiry conducted for purposes of entering the summary judgment does not require an analysis or reexamination of the factual basis for the forfeiture.

Surety disagrees, arguing that if the summary judgment is signed by a judge who did not hear “the evidence regarding the alleged unexcused failure to appear, the surety is deprived of Due Process because there was no meaningful review by the judge that [sic] declared the forfeiture to discern something from any part of the record, including confidential or undisclosed proceedings, that might require exoneration of the bond.” This argument is unconvincing because it incorrectly assumes the judge who signs the summary judgment has a sua sponte obligation to address whether the grounds for the forfeiture existed. As described earlier, the judge signs the summary judgment after determining that the three statutory conditions have been satisfied. (See § 1306, subd. (a).) Contrary to Surety’s suggestion, the judge does not sit as a court of review on the prior decision to declare bail forfeited.

The essence of due process is notice and the opportunity to be heard “ ‘at a meaningful time and in a meaningful manner.’ ” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) Analyzed from this perspective, Surety appears to claim that it was not given an opportunity to be heard in a meaningful manner. In *Amwest, supra*, 147 Cal.App.3d 961, the court considered the statutory procedure for summary judgment against a surety on a bail bond, which allows a surety to file a motion to vacate the forfeiture. (*Id.* at p. 967.) The court concluded that “there is under the Penal Code both notice to the surety and the opportunity to be heard [citations] sufficient to satisfy the California constitutional due process requirements.” (*Ibid.*) In addition to a motion to vacate the forfeiture brought prior to the entry of summary judgment, surety may challenge a summary judgment by filing a motion to set aside the summary judgment. (See *Accredited '19, supra*, 34 Cal.App.5th at p. 894 [surety appealed from an order denying

its motion to vacate forfeiture, exonerate bail and set aside the summary judgment].) Accordingly, Surety had a procedural avenue for asserting the three conditions for summary judgment were not satisfied. In addition, Surety had a procedural means for challenging the underlying forfeiture. Consequently, we conclude Surety was not denied its due process rights when a judge who did not declare the bail forfeited signed the summary judgment.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.